

Message Text

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ACTION STR-04

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USMTN USEEC USOECD

ACTION STR

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E.O. 11652: NA

TAGS: ETRD, MTN

SUBJ: GOVERNMENT PROCUREMENT - PLURILATERAL DRAFTING SESSION

REF: STATE 65882

1. SUMMARY: IN FIRST PLURILATERAL DRAFTING SESSION, MAJOR DEVELOPED COUNTRIES REACHED AD REFERENDUM AGREEMENT ON CANADIAN DRAFT LANGUAGE FOR NATIONAL TREATMENT/NONDISCRIMINATION AND TECHNICAL SPECIFICATIONS. USEFUL DISCUSSION ON S&D IN GOVERNMENT PROCUREMENT ALSO ENSUED. END SUMMARY.

2. AT FIRST PLURILATERAL MEETING ON DRAFT GOVERNMENT PROCUREMENT TEXTS, INFORMAL DEVELOPED COUNTRIES GROUP (US, EC, CANADA, NORDICS, JAPAN AND SWITZERLAND) FOCUSED ON

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CANADIAN DRAFT CONCERNING NONDISCRIMINATION/NATIONAL TREATMENT AND TECHNICAL SPECIFICATIONS. AD REFERENDUM AGREEMENT REACHED ON LANGUAGE CONSISTENT WITH U.S. POSITION CONTAINED IN REFTEL. MEETING WAS VERY CONSTRUCTIVE AND ALL PARTICIPANTS GENUINELY HELPFUL.

3. FOLLOWING LANGUAGE SUBSTANTIALLY AGREED ON, HOWEVER,

SPECIFIC WORDING OF BRACKETED PORTIONS IS SUBJECT TO FURTHER REFINEMENT:

QUOTE: NONDISCRIMINATION/NATIONAL TREATMENT:

WITH RESPECT TO ALL LAWS, REGULATIONS, PROCEDURES AND PRACTICES AFFECTING GOVERNMENT PROCUREMENT COVERED BY THIS AGREEMENT, OTHER THAN CUSTOMS DUTIES AND CHARGES OF ANY KIND IMPOSED ON OR IN CONNECTION WITH IMPORTATION, THE METHOD OF LEVYING SUCH DUTIES AND CHARGES, AND OTHER IMPORT REGULATIONS AND FORMALITIES, SIGNATORIES SHALL PROVIDE IMMEDIATELY AND UNCONDITIONALLY (TO THE PRODUCTS OF ALL SIGNATORIES AND SUPPLIERS OFFERING GOODS ORIGINATING WITHIN THE SIGNATORY COUNTRIES,) TREATMENT NO LESS FAVORABLE THAN:

(A) THAT ACCORDED TO DOMESTIC PRODUCTS AND SUPPLIERS; AND

(B) THAT ACCORDED TO PRODUCTS AND SUPPLIERS OF ANY OTHER SIGNATORY.

TECHNICAL SPECIFICATIONS:

(A) TECHNICAL SPECIFICATIONS LAYING DOWN THE CHARACTERISTICS OF THE PRODUCTS TO BE PURCHASED SUCH AS LIMITED OFFICIAL USE

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QUALITY, PERFORMANCE, SAFETY AND DIMENSIONS, TESTING AND TEST METHODS, SYMBOLS, TERMINOLOGY, PACKAGING, MARKING AND LABELLING, AND CONFORMITY CERTIFICATIONS REQUIREMENTS PRESCRIBED BY PROCUREMENT AGENCIES OR ENTITIES, SHALL NOT BE PREPARED, ADOPTED OR APPLIED WITH A VIEW TO CREATING UNNECESSARY OBSTACLES TO INTERNATIONAL TRADE NOR HAVE THE EFFECT OF AFFORDING PROTECTION TO DOMESTIC PRODUCTION, (OR TO PRODUCTION OF ANY OTHER COUNTRY).

(B) ANY TECHNICAL SPECIFICATION PRESCRIBED BY PROCUREMENT AGENCIES OR ENTITIES SHALL, WHENEVER POSSIBLE:

I) BE IN TERMS OF PERFORMANCE RATHER THAN DESIGN; AND

II) BE BASED ON RECOGNIZED INTERNATIONAL STANDARDS, NATIONAL TECHNICAL REGULATIONS; OR ON NATIONAL STANDARDS.

(C) THERE SHALL BE NO REQUIREMENT OR REFERENCE TO A PARTICULAR TRADE MARK OR NAME, PATENT, DESIGN OR TYPE, SPECIFIC ORIGIN OR PRODUCER, UNLESS THERE IS NO SUFFICIENTLY PRECISE OR INTELLIGIBLE WAY OF

DESCRIBING THE PROCUREMENT REQUIREMENTS AND PROVIDED
THAT WORDS SUCH AS "OR EQUIVALENT" ARE INCLUDED IN
THE TENDERS. END QUOTE.

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4. EC DEL (DERISBOURG) QUESTIONED WHETHER CANADIAN
DRAFT WOULD ALLOW A COMMON MARKET OR FREE TRADE AREA
TO GIVE NONDISCRIMINATION/NATIONAL TREATMENT TO MEMBERS
FOR PRODUCTS AND ENTITIES, INCLUDING NONDISCRIMINATION
BELOW THRESHOLD VALUE, OUTSIDE THE EVENTUAL AGREED
COVERAGE OF THE PROCUREMENT CODE. CANADIAN DEL (CLARK)
OPINED THAT THE WORDS "COVERED BY THIS AGREEMENT" AD-
DRESSED THE QUESTION. NORDIC DEL WAS NOT SATISFIED THAT
DRAFT WAS COMPLETELY CLEAR AND SUGGESTED THAT AN INTER-
PRETATIVE NOTE SHOULD BE DEVELOPED TO CLARIFY FREE TRADE
AREA/CUSTOMS UNION QUESTIONS. JAPANESE DEL (TAMORI)
AGREED WITH THIS DRAFTING PROCEDURE, BUT ADDED THAT HIS
COUNTRY'S POSITION WAS THAT THE NONDISCRIMINATION PROVI-
SIONS SHOULD COVER ALL CONTRACTS WHETHER OR NOT THEY ARE
ABOVE OR BELOW THE EVENTUALLY AGREED UPON THRESHOLD LEVEL.

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U.S. DEL (NEWKIRK) CITED TRADITIONAL U.S. POSITION ON SCOPE OF GATT ARTICLE XXIV AND INDICATED THAT ANY INTERPRETATIVE NOTE WOULD BE SUBJECT TO CLOSE U.S. SCRUTINY. NEWKIRK FURTHER STATED THAT SUCH A NOTE MUST BE LIMITED TO THE PARTICULAR QUESTION UNDER CONSIDERATION AND NOT BE EXPANDED IN SCOPE AND RESERVED U.S. ACCEPTANCE OF THE NOTE UNTIL LANGUAGE WAS TABLED.

5. IN GENERAL DISCUSSION ON THE RELATIONSHIP BETWEEN THE GOVERNMENT PROCUREMENT CODE AND THE GENERAL AGREEMENT, SOME DELS RAISED QUESTION OF HOW TO MODIFY ARTICLE III(8) FOR GOVERNMENT PROCUREMENT AND NEW OBLIGATIONS IN CODE. SWITZERLAND SUGGESTED THAT LANGUAGE MIGHT BE PUT IN THE NONDISCRIMINATION SECTION OF THE CODE TO TAKE CARE OF THIS PROBLEM, BUT OTHERS FELT THAT THE GP CODE WAS NOT THE PLACE TO MODIFY GATT AND THAT FOOTNOTING THE RELEVANT GATT ARTICLES MIGHT BE A BETTER APPROACH. CONSENSUS FAVORED LATTER APPROACH.

6. WITH REGARD TO COVERAGE OF THE NONDISCRIMINATION PARAGRAPH, THE EC NOTED THAT GATT ARTICLE III ONLY MENTIONS "PRODUCTS" WHEREAS THE DRAFT ALSO INCLUDES "SUPPLIERS". DERISBOURG INDICATED THAT THE LATTER APPEARED TO BE MORE SIMILAR TO ARTICLE 42(2) OF THE OECD DRAFT WHICH COVERS "NATIONALS AND FIRMS". OTHERS AGREED WITH THIS INTERPRETATION. DERISBOURG FURTHER OBSERVED THAT THE OBLIGATIONS IN 42(2) CONCERNING ORIGIN OF PRODUCTS WERE NOT COVERED IN THE CANADIAN DRAFT. AFTER SOME DISCUSSION THE EC SUGGESTED THAT AN ADDITIONAL PROVISION BE DEVELOPED LATER TO COVER THE ORIGIN PROBLEM.

7. ADDITIONAL DISCUSSION CENTERED ON THE NEED FOR THE PHRASE, "OTHER THAN CUSTOMS DUTIES AND CHARGES OF ANY

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KIND IMPOSED ON OR IN CONNECTION WITH IMPORTATION, THE METHOD OF LEVYING SUCH DUTIES AND CHARGES, AND OTHER IMPORT REGULATIONS AND FORMALITIES". THE CANADIAN DEL INDICATED THIS PHRASE HAS BEEN ADDED MERELY TO INDICATE THAT SUCH ITEMS WERE OUTSIDE THE COMPETENCE OF THE CODE. U.S. DEL OBSERVED THAT SUCH LANGUAGE ALSO ALLOWS FOR ADDITIONAL PROTECTION VIS-A-VIS STATE TRADING COUNTRIES, A PRIME EC CONCERN. DERISBOURG AGREED.

8. TECHNICAL SPECIFICATIONS - DISCUSSION ON THE TECHNICAL SPECIFICATIONS SECTION OF THE CANADIAN DRAFT WAS

RELATIVELY SHORT AND FEW CHANGES WERE MADE. MOST DELS SAW THE GOVERNMENT PROCUREMENT CODE AS BEING SELF-CONTAINED, BUT WHERE APPROPRIATE, FELT ITS PROVISIONS SHOULD BE CONSISTENT WITH OTHER INSTRUMENTS, INCLUDING THE DRAFT STANDARDS CODE. ALONG THIS LINE, AT SUGGESTION OF U.S. DEL, THE WORD "UNNECESSARY" WAS ADDED PRIOR TO THE WORD "OBSTACLES" IN PARA (A). ADDITIONALLY, DELS AGREED THAT STANDARDS IN PARA. (B)(II) WERE TO BE LISTED ON A PRIORITY BASIS WITH "TECHNICAL REGULATIONS" INSERTED PRIOR TO "NATIONAL STANDARDS". COMMENT: EC DEL FULLY ACCEPTED THIS PRIORITY WHICH IS CONRADICTORY TO CORRESPONDING SECTION OF EC DIRECTIVE ON GOVERNMENT PROCUREMENT. WE HOPE THIS REFLECTS FLEXIBILITY ON THE PART OF THE COMMISSION VIS-A-VIS DIRECTIVE. END COMMENT. IT WAS FURTHER NOTED THAT PARA (A) AS WRITTEN, PROVIDED NONDISCRIMINATION DOMESTICALLY BUT DID NOT EXTEND TO FOREIGN FIRMS. ACCORDINGLY, A SLIGHT CHANGE WAS MADE IN THE DRAFT TO ENSURE THAT MFN APPLIED BOTH DOMESTICALLY AND TO FOREIGN FIRMS.

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9. AFTER COMPLETION OF DISCUSSION OF TEXTS, FOLLOWING

ISSUES RAISED:

(A) SCOPE AND COVERAGE - EC DEL RAISED A GENERAL QUESTION ON SCOPE AND COVERAGE SECTION OF CANADIAN DRAFT. IN PARA. C HE FELT THAT INCLUSION OF THE WORD "ALL" WAS INCONSISTENT WITH THE SUBSEQUENT PART OF THE SENTENCE WHICH SUGGESTS CREATING AN ANNEX LISTING ENTITIES UNDER THE DIRECT CONTROL OF THE SIGNATORIES. CANADIAN DEL INDICATED THAT REASON FOR HAVING INCLUDED THE WORD "ALL" WAS TO ENSURE THAT AGENCIES CREATED SUBSEQUENTLY BY A SIGNATORY WOULD BE INCLUDED UNDER THE PROVISIONS OF THE CODE. US MTN DEL POINTED OUT THAT UNLESS GENERAL AGREEMENT REACHED TO INCLUDE ALL ENTITIES UNDER DIRECT GOVERNMENT CONTROL, ENTITY COVERAGE WOULD BE INDIVIDUALLY NEGOTIATED. ONCE THIS COVERAGE NEGOTIATED, A BALANCE OF OBLIGATIONS WILL HAVE BEEN REACHED AMONG SIGNATORIES. LIMITED OFFICIAL USE

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TORIES THAT MIGHT BE ALTERED IF A COUNTRY ESTABLISHED A NEW AGENCY WITH NEW PURCHASING AUTHORITY AND NEW FUNDS. SUCH AN AGENCY SHOULD NOT NECESSARILY AUTOMATICALLY BE INCLUDED WITHIN THE CODE'S PROVISIONS. ON A TENTATIVE BASIS OTHER PARTICIPANTS AGREED THAT IT MIGHT BE BETTER TO DELETE BOTH "ALL" AND "DIRECT CONTROL" AND EVENTUALLY NEGOTIATE A SINGLE ANNEX OF ENTITIES COVERED BY THE GOVERNMENT PROCUREMENT CODE.

10. SPECIAL AND DIFFERENTIAL TREATMENT - GENERAL DISCUSSION ON SPECIAL AND DIFFERENTIAL (S&D) TREATMENT CENTERED ON IDEAS SWISS DEL HAS BEEN CONSIDERING IN CONNECTION WITH THE PAPER THEY ARE PREPARING ON S&D IN GOVERNMENT PROCUREMENT PROMISED FOR SEPTEMBER. SWISS THOUGHTS ON S&D WERE MOST GENEROUS OF GROUP AND INCLUDED POSSIBILITY OF NOT ONLY ALLOWANCE OF DISCRIMINATION WITHIN DOMESTIC LDC MARKETS AND AMONG LDCS, BUT ALSO GRANTING SPECIAL QUOTAS OR PREFERENCES FOR PURCHASE OF LDC GOODS BY DCS. ALL OTHER DELS INDICATED THAT THEY COULD NOT ACCEPT DISCRIMINATION AMONG LDCS OR PURCHASING PREFERENCES OF ANY KIND. MOST SUGGESTIONS FOR S&D CENTERED ON SOME SORT OF TECHNICAL ASSISTANCE. EC DEL STATED THEY HAVE FLOATED AMONG MEMBER STATES A THREE CATEGORY APPROACH TO S&D: 1) NON-SIGNATORIES TO CODE - THESE LDCS, WHETHER SIGNATORIES OF GATT OR NOT, WOULD MAINTAIN THE GATT DEROGATION IN ARTICLE III(8) TO DISCRIMINATE HOWEVER THEY WISHED; (2) LEAST DEVELOPED LDCS, AS LISTED BY UN - COULD BECOME SIGNATORIES OF CODE AND OBTAIN ITS BENEFITS WITH NO OBLIGATIONS; 3) OTHER LDCS - COULD SIGN CODE AND ACCEPT ALL OBLIGATIONS, HOWEVER, ON A NEGOTIATED BASIS THEY WOULD BE ALLOWED CERTAIN DOMESTIC MARKET EXEMPTIONS FROM CODE'S NONDISCRIMINATION PROVISIONS FOR A FIXED PERIOD OF TIME, AFTER WHICH THE LIMITED OFFICIAL USE

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EXEMPTION WOULD CEASE. SEVERAL DELS EXPRESSED FEELING THAT SPECIFIC TIME LIMITS MIGHT BE A BETTER APPROACH THAN GRADUATION IN THIS CASE. SOME DELS THOUGHT THAT THE EC DEROGATION APPROACH WAS PREFERABLE TO SEAKEN-ING CODE BY DEFINING "NONDISCRIMINATION" TO MEAN "DIS-CRIMINATION" AS SUGGESTED BY THE LDCS.

1. DELS AGREED TO MEET NEXT IN LAT SEPTEMBER TO DISCUSS LANGUAGE FOR SCOPE AND COVERAGE PARAGRAPH (WITH NO DIS-CUSSION ON THRESHOLD OR ENTITIES) AND TENDERING PROCE-DURES.

12. COMMENT: MEETING HELD IN VERY CORDIAL AND COOPERATIVE ATMOSPHERE WITH ALL DELS DEMONSTRATING CONSIDERABLE FLEX-IBILITY. ALTHOUGH RESULTS ARE ON AD REFERENDUM BASIS, ALL DELS APPEARED TO HAVE DETAILED INSTRUCTIONS AND WERE WILLING TO INDIVIDUALLY STATE AGREEMENT ON TEXTS. AFTER MEETING, DERISBOURG STATED THAT HE IS NOW "QUITE OPTIMISTIC" ON OUTCOME OF GOVERNMENT PROCUREMENT NEGOTIA-TIONS. US DEL CONCURS. END COMMENT. CULBERT

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TAGS: ETRD, XX, MTN
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